IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.682/2002

Reserved on. 27.4.2007

Decided on.1.6.2007

Sunita Bhandari **…Petitioner.**

Versus

State of H.P. and another. **…Respondents**

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*.No.*

For the petitioner :	**Mr. Anand Sharma, Advocate**
For the respondent No.1	**Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan and Ms. Meenakashi Sharma, Deputy Advocates General.**
For the respondent No.2	**Mr. Sandeep Kaushik, Advocate.**

Rajiv Sharma, J.

This petition is directed against the judgment of learned District Judge, Chamba, District Chamba, H.P. dated 29.11.2001 passed in Civil Misc. Appeal No. 6 of 2001.

The brief facts necessary for the adjudication of this petition are that a notice was issued to the petitioner after the receipt of written complaint from the Engineering and Sanitation Sections to stop the construction work forthwith. She despite the issuance of notice dated 28th December, 1999 did not stop the construction activities and thereafter on the basis of the report of the field staff dated 10.1.2000, the matter was placed in the meeting of the House of the Council of the Municipal on 26.2.2000 whereby she was given opportunity to stop the construction

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? No.

work and to remove the unauthorized construction raised. She despite the issuance of notice did not stop the construction activities and she was served with a notice under section 211 (C) of the H.P. Municipal Act, 1994 why a fine of Rs. 1000/- for not complying with the directions for raising unauthorized construction be not imposed upon him. The notice was issued by the Council on 12th May, 2000. Again the matter was placed before the meeting of the House of the Municipal Council on 31.5.2000 whereby it was resolved that the matter be kept pending. The matter was again placed before the meeting of the House of the Municipal Council on 18.8.2000, 13.11.2000 and 8.3.2001 when it was unanimously resolved that the matter be kept pending and the same be again placed in the meeting of the House of Municipal Council. Ultimately on 27.6.2001 the matters was placed before the House of Council and vide its resolution No. 167 (12), it was unanimously resolved to demolish the unauthorized construction of third storey of the building of the hotel Bhandari Place situated at S.T. Mall, Dalhousie. Consequently a notice was issued to the petitioner on 5th July, 2001 (Annexure P-1. The petitioner feeling aggrieved by the issuance of notice dated 5th July, 2001 had filed an appeal under section 212 of the H.P. Municipal Act, 1994 before the learned District Judge, Chamba. The learned District Judge, Chamba has dismissed the appeal on 29.11.2001. She had also filed a representation against the demolition order passed by the Municipal Council, Dhalhousie to the Secretary (Urban Development) which was rejected by the Secretary (UD) in view of the judgment passed by the learned District Judge, Chamba dated 29.11.2001.

Mr. Anand Sharma, Advocate appearing on behalf of the petitioner has submitted that the orders passed by the Municipal Council, learned

District Judge Chamba and the Secretary dated 5.11.2007, 29.11.2001 and 13th May, 2002 respectively are not sustainable in the eyes of law.

Mr. Sandeep Kaushik, Advocate appearing on behalf of respondent No.2 has supported the orders passed by the competent authorities.

I have heard the parties and gone through the record.

Mr. Anand Sharma argued that there was violation of principles of natural justice since the notices were never served upon the petitioner before the resolution was passed by the Municipal Council which led to issuance of order of demolition dated 5.7.2001. Mr. Sandeep Kaushik has refuted the submissions made by Mr. Anand Sharma and has submitted that the notice under section 211 (1) ((a) of the H.P. Municipal Act, 1994 dated 28.12.1999 was delivered to the petitioner to stop the construction. Mr. Kaushik has further submitted that the 7 days final opportunity to stop the construction was also provided to the petitioner. He has further submitted that the notice was delivered to the petitioner that why a fine of Rs. 1000/- be not recovered from her for raising unauthorized construction and it was in these circumstances that the matter was finally placed before the meeting of the House of Municipal Council on 31.5.2000, but the same was postponed to 18.8.2000, 13.11.2000 and 8.3.2001 and finally the matter was again placed in the meeting of the House of Council which vide resolution No. 177 (12) dated 27.6.2001 unanimously resolved to demolish the unauthorized construction of the 3rd storey of the building unauthorized raised by the petitioner. It is thus evident that the petitioner was served with a notice but she did not stop the unauthorized construction. The order passed by the Council on 5th July, 2001 is in accordance with law and the same has been issued after complying the principles of the natural justice.

Mr. Anand Sharma, Advocate then argued that the respondent-council has not taken any action against the persons whose details are given in para 12 of the petition. Mr. Sandeep Kaushik, Advocate has drawn the attention of this Court to the reply filed to para 12 and on that basis submitted that the Council has taken action against the persons mentioned therein in accordance with law and the deviation in those cases was less than 10%. Mr. Kaushik has further submitted that as far as the petitioner is concerned there is no question of any deviation since the entire construction is totally unauthorized.

The learned District Judge has examined the record and the findings recorded by him will not be interfered with by this Court while exercising the jurisdiction under Article 226/227 of the Constitution of India.

The Hon'ble Supreme Court in ***M.I. Builders Pvt. Ltd. V. Radhey Shyam Sahu*** (1999*) 6* SCC 464 has held that the Court should order demolition of such construction even though builder has invested considerable amount. Their Lordships of the Hon'ble Supreme Court have opined as under:

> **"No consideration should be shown to the builder or any other person where construction is unauthorized. This dicta is now almost bordering the rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such a discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorized construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion**

wherever it is required to be exercised has to be in accordance with law and set legal principles."

The upshot of the above discussion is that the order passed by the Municipal Council dated 5th July, 2001, the judgment dated 29.11.2001 and order dated 12th May, 2002 are in accordance with law. The petitioner had raised unauthorized construction without seeking prior permission of the competent authority in accordance with law. There is neither any jurisdictional error nor any procedural irregularities in the appellate judgment passed by learned District Judge Chamba.

As such there is no merit in the petition and the same is dismissed accordingly with no order as to costs and the interim order dated 30.5.2002 is vacated.

(Rajiv Sharma), Judge

June 1, 2007
Awasthi